

## REMARKS

The present amendment is submitted in response to the Office Action dated June 30, 2005, which set a three-month period for response, making this amendment due by October 30, 2005.

Claims 1-11 are pending in this application.

In the Office Action, claims 1-3, 5, and 7-10 were rejected under 35 U.S.C. 102(b) as being anticipated by DE 19821630 C1 to Vogel et al. Claims 4 and 6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel et al. Claim 11 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel et al in view of U.S. Patent No. 6,432,378 to Autenrieth. Claims 1-11 were provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-11 of copending Application No. 10/396,144.

In the present amendment, claims 1-11 were amended to adopt standard U.S. claim format and to more clearly define the relationships between the recited elements.

In addition, claim 1 was amended to more clearly define the present invention over the cited references by additionally reciting that "the heating stream 6 is separated into two flue gas partial flows, wherein one of the flue gas partial flows is provided with a flap for closing an outlet opening". Support for this amendment can be found in the specification on page 12, second paragraph.

The cited reference to Vogel, cited in support of the rejection of claim 1 under Section 103, fails to disclose or suggest a heating stream that is separated

into two partial heating streams, one of them being closeable by a flap at its outlet opening. Because Vogel does not disclose or suggest the desirability of any modification of the disclosed device in this manner, the rejection under Section 103 must be withdrawn. See *In re Fritch*, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992).

With regard to the double-patenting rejection, the Applicants intend to file a terminal disclaimer in the event that the cited patent application matures to an issued patent.

For the reasons set forth above, the Applicants respectfully submit that claims 1-11 are patentable over the cited art. The Applicants further request withdrawal of the rejections under 35 U.S.C. 103 and reconsideration of the claims as herein amended.

Should the Examiner have any further comments or suggestions, the undersigned would very much welcome a telephone call in order to discuss appropriate claim language that will place the application into condition for allowance.

Respectfully submitted,



Michael J. Striker  
Attorney for Applicant  
Reg. No.: 27233  
103 East Neck Road  
Huntington, New York 11743  
631-549-4700